

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 17 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MISTRI NATHALAL TULSIDAS

Versus

THAKAR JAMNADAS LALJI  
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Appearance:

MR BHARAT J SHELAT for Petitioner  
NOTICE SERVED for Respondent No. 1  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/11/2000

ORAL JUDGEMENT

1. The present Appeal is filed against the judgment and order of District Judge, Jamnagar, on 20th October, 1981, in Regular Civil Appeal No. 42 of 1981, whereby the learned District Judge reversed the judgment and

decree of the learned Civil Judge (JD), Bhanvad, Jam-Jodhpur, passed in Regular Civil Suit No. 3 of 1976, dismissing the suit of the plaintiff, present respondent.

2. As per the brief facts, the present respondent original plaintiff of Regular Civil Suit No. 3 of 1976 a registered partnership firm, M/s Thakar Jamnadas Lalji, filed the above suit stating that the defendant present appellant had opened current credit accounts with the plaintiff firm, being carpenter and a mistry, and was purchasing articles and goods on credit. The accounts with the defendant, as per the case of the plaintiff, were settled on 20th August, 1972, whereby the defendant present appellant entered into an agreement with the plaintiff firm, present respondent, and that by this agreement the present appellant acknowledged the liability to pay debt. Again on 24th January, 1973, the respondent acknowledged the existing liability by second writing and later on failed to pay up the dues of the plaintiff. Both these writings are in account books of the plaintiff firm and alleged to have been signed by the defendant. Plaintiff firm issued Notice to the defendant and thereafter filed suit for the recovery of Rs.9,600/after deducting sum of Rs. 1,200/- allegedly paid by the defendant to the firm. The plaintiff firm also prayed for consequential and ancillary reliefs.

3. The suit came to be challenged by the present defendant by stating that the suit was totally false and frivolous and the defendant has no transaction whatsoever with the plaintiff firm, as stated. It was the case of the defendant that Dayalal Nanji Patel, whose debt alleged to have agreed to be paid by the defendant, was a necessary party to the suit. The defendant also denied the execution of both the writings as stated by the plaintiff. Further, it was contended that the alleged writings were in the form of promissory note and the same being not valid promissory note, could not be exhibited and read in evidence. Defendant further stated that he did not stay at village Jamvadi and he stayed at Abu for last 12 years. It was also stated that the suit of the plaintiff was barred by law of limitation.

4. Learned Trial Judge after recording of the evidence and hearing the parties, came to the conclusion that the plaintiff firm could not establish that the defendant purchased goods worth of Rs. 9,600 and that therefore the remaining issues regarding the acknowledgment and the liability of the defendant did not survive. The learned Trial Judge placed reliance on a decision of this Court in the matter of ATUMAL vs.

MAHETRAM BASHRMAL reported in IX GLR, 1078 wherein it was observed that the entries of books of accounts regularly kept in the course of business before they can be acted upon for holding a person liable thereunder must be corroborated by some corroborative evidence from other sources. The learned Trial Judge held that the entries made in the books of accounts as produced by the plaintiff had no corroboration at all and therefore the suit was required to be dismissed.

5. The plaintiff filed above Regular Civil Appeal No. 42 of 1981 in the court of District Judge, Jamnagar. Learned District Judge, Jamnagar, after hearing both the parties, came to the conclusion that the case was covered under Section 25(3) of the Contract Act. The learned First Appellate Judge came to the conclusion that Exh. 24 writing and Exh.47 writing both were agreements executed by the defendant to pay a time barred debt. Learned first Appellate Judge further ruled that the all documents which denotes promise to pay may not be interpreted as promissory notes and, therefore, the said writings were not the promissory notes and the learned First Appellate Judge reversed the judgment and decree passed by the Trial Judge dismissing the suit and decreed the suit of the plaintiff, vide his judgment and order dated October 20, 1981. Being aggrieved by the above said judgment and order, this Appeal is filed by the original defendant.

6. Learned Advocate Mr. Udayan P. Vyas for learned Advocate Mr. B.S. Shelat for the appellant was heard at length. Though notices are served on the respondent, none has appeared.

7. While admitting this Appeal, the Court framed the following issues to be the substantial questions of law involved in the Appeal:

" Whether Exhs. 47 and 24 are promissory notes  
and if yes, whether they were admissible in  
evidence. "

8. While looking to Exh.24 and Exh.47, it appears that writings are executed in the accounts books of the plaintiff firm and those writings are signed by the defendant, though the defence was of the total denial, but as a question of fact, the execution is established and now cannot be reopened. Therefore, the interpretation of these documents Exh. 24 and 47 is a substantial question of law and subject matter of this Appeal, to be decided.

9. These two documents either could be promissory notes or writing of acknowledgment of liability under Section 18 of the Limitation Act or promise to pay a time barred debt as per Section 25(3) of the Indian Contract Act.

10. There is no presumption of law that whenever there is a promise to pay, the instrument would always be the Negotiable Instruments Act and that the same could be promissory note only. At the same time, the acknowledgment of liability within the meaning of Section 18 of the Limitation Act could be interpreted as an acknowledgment only if the same is executed within the meaning of provision made i.e. within the period of limitation. Any writing executed beyond the period of limitation must not be termed as acknowledgment of liability and, therefore, both the writings above admittedly have been executed beyond the period of limitation, could not be said to be the acknowledgment of liability to pay debt.

11. Section 25(3) of the Indian Contract Act permits parties to enter into an agreement to pay time barred debt. The general principle is the agreement made without consideration is void. Section 25 of the Indian Contract Act carves out exceptions. One of the exceptions is sub-sec.(3) of Sec. 25 wherein an agreement made without consideration is not void when agreement is a promise made in writing and signed by the person to be charged therewith or his agents generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits and such agreements are a contract.

12. It cannot be presumed that the parties were not within their knowledge that the debt which is being agreed to pay is the time barred debt and that the party undertakes to pay to the other party debt incurred by third party and that too time barred debt. Meaning thereby the parties entered into a contract with full knowledge that what was agreed was to pay time barred debt. The writings, as said above, could not be termed as acknowledgment because the same are not executed within the period of limitation and while we interpret and read the document along with the intention of the parties as said above, in no case, it could be said that those writings were the promissory notes and, therefore, the question of admissibility of such documents would not arise at all. By virtue of Section 25(3) of the Indian

Contract Act, such agreements are valid without even consideration, when parties agree to pay a time barred debt, then the only interpretation coupled with the above facts as to the writings executed i.e. Exhibits 24 and 47 is possible that the said agreement was executed by the parties under Section 25(3) of the Indian Contract Act and such agreement being contract are enforceable. Parties may enter into an agreement and execute writings even in accounts books also. These two agreements i.e. Exhibits 24 and 47, entered into the accounts books, are enforceable in law, the plaintiff cannot be non-suited on the ground that these are the copies of the accounts books and without corroboration, the entries cannot be acted upon.

13. In this view of the matter, Exhibits 47 and 24 both writings are a contract under Section 25(3) of the Indian Contract Act and enforceable. Therefore, there is no substance in the Appeal and the same is required to be dismissed.

14. In the result, Appeal stands dismissed with no order as to costs.

(J.R. Vora, J.)

p.n.nair